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Supreme Court, U.S.
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No. 04-824

IN THE

Supreme Court of the United States

EX PARTE SOUTHEASTERN RUBBER RECYCLING,
a division of Sunrise Garden Mart, Inc.,
Petitioner,

and

STAN SULLIVAN,
(In re: Southeastern Rubber Recycling, *et al.* v.
State Department of Public Health, *et al.*)
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Alabama

PETITION FOR REHEARING

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QUESTION PRESENTED

Would it be appropriate for the Court to reconsider its decision of February 22, 2005 denying the petition for a writ of certiorari upon this petition for rehearing, upon the substantial grounds not previously presented, to wit: The state statutory provisions regulating the disposal of scrap tires were altered effective on October 1, 2004 significantly changing the responsibilities of governmental agencies with the enactment of the Alabama Scrap Tire Environmental Quality Act, Ala. Code 1975, §22-40A-1 *et seq.* (App. 2a-24a).

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Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Alabama

PETITION FOR REHEARING

The petition for a writ of certiorari was denied on February 22, 2005, and this petition for rehearing is respectfully submitted pursuant to the provisions of Rule 44.2 of the Supreme Court Rules.

STATEMENT OF THE CASE [1]

In the Petition for Writ of Certiorari, the basic federal issue was the appearance of bias on the part of an elected trial judge. The Petitioners also raised, on pages 10-14 of the petition, the issue of the arbitrary and unreasonable procedure

[1] The original statement of the case is presented at pages 2-4 of the Petitioners' Petition for Writ of Certiorari, and it will not be repeated herein.

that the Defendants were enforcing upon the Petitioners at their used tire collection and disposal facility. The Petitioners included in the initial Petition references to Ala. Code §22-40-1 *et seq.*, 1975, which contained provisions that were in effect at the time of the issuance of the challenged decisions of the state courts. Subsequent to the issuance of those decisions, however, the provisions of the Alabama Scrap Tire Environmental Quality Act became effective on October 1, 2004 (§22-40A-1 *et seq.*) (App. 2a-24a), replacing the former provisions found in §22-40-1 *et seq.* (App. Pet. 39a-57a).

DISCUSSION

In the Petitioners' original submission filed on December 16, 2004, it was contended that the federal due process rights of the Petitioners had been violated because of the appearance of bias on the part of the presiding trial judge, coupled with the alleged arbitrary and capricious nature of the challenged court decisions. In partial support of this position, the Petitioners referred, at pages 10-11 of their Petition, to state legislation designated as the Scrap Tire Disposal Act, Ala. Code 1975, §22-40-1 *et seq.*, to demonstrate that the state courts sanctioned regulatory actions of an agency which lacked the authority to act as it had done. The contention even then was that the chief responsibility for regulating scrap disposal was primarily lodged with the Alabama Department of Environmental Management ("ADEM"), and not with the Alabama Department of Public Health ("ADPH").

While the Scrap Tire Disposal Act, Ala. Code 1975, §22-40-1 *et seq.* was in effect and was to be enforced during the periods complained of in the original Petition, it now appears that the Petitioners probably should have also advised the Court upon that original submission of this case that the statute cited had been repealed effective on October 1, 2004, and replaced by the Alabama Scrap Tire Environmental

Quality Act, Ala. Code 1975, §22-40A-1 *et seq.* as of that date. The new enactment may be said to have supported the previous contentions of the Petitioners regarding the legislative intent to restrict the role of ADPH in cases involving the disposal of scrap tires and to have clarified the intent that ADEM would have that responsibility.

Under §22-40-8, law enforcement responsibility over scrap tires was given to either the ADPH or ADEM, with fines payable to ADPH.(§22-40-9). With the enactment of the Alabama Scrap Tire Environmental Quality Act, the "department" is defined as "[t]he Alabama Department of Environmental Management (ADEM) or its successor organization or organizations having similar responsibility." (§22-40A-3(4)) (App. 3a). In §22-40A-11(a) (App. 13a), one of ADEM's responsibilities is stated as follows:

> The department is designated by this chapter as the administrating agency for this chapter including administering remediation and enforcement programs; provided, however, the department may enter into delegation agreements with county commissions for enforcement of this chapter. The department is hereby authorized to carry out the purposes of this chapter and is empowered to administer and enforce this chapter using the authorities granted to it by the Environmental Management Act.

The new replacement provisions also provide for funding to ADEM for enforcing the Act, pursuant to §22-40A-22, and not to ADPH. (App. 23a)

Due to these legislative changes in statutory provisions, ADPH apparently does not now possess any significant legislative authority to enforce the new statutory provisions, although it is vigorously purporting to do so in the present state court litigation.

The appropriate consideration relevant to the issues now presented is whether the new Act's provisions would be

applied retroactively to the case now pending in the state courts. There is a wealth of federal and state caselaw on the issue of the retroactive application of a statute. In *United States v. Sperry Corp.*, 493 U.S. 52, 64 (1989), this Court said:

> "Retroactive legislation does have to meet a burden not faced by legislation that has only future effects. 'It does follow...that what Congress can legislate prospectively it can legislate retrospectively. The retroactive aspects of legislation, as well as the prospective aspects must meet the test of due process, and the justifications for the latter may not suffice for the former.' But that burden is met simply by showing that the retroactive applications of the legislation is itself justified by a rational legislative purpose." *Pension Benefit Guaranty Corporation v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984) (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17 [1976]).

(citation omitted). This same general concept is adopted by Alabama in *Monroe v. Valhalla Cemetery Company, Inc.*, 749 So. 2d 470, 473-474 (Ala. 1999).

To further compound the Petitioners' due process concerns, the trial judge in his order of January 6, 2003, declared that the facility of the Petitioners was an "unauthorized tire dump." (App. Pet. 8a). Under Ala. Code §22-27-2(6)(1975), the definition of an unauthorized dump is a type of "solid waste disposal site." (App. Pet. 33a). Solid waste disposals are to be regulated by ADEM, not ADPH, and ADPH only had the authority to abate the nuisance of mosquitoes. (App. Pet. 35a-36a). Thus, the trial judge appears to have ignored even the then-existing controlling statutory provisions.

The Alabama Scrap Tire Environmental Quality Act now affords the Petitioners certain rights through "an administrative process" (App. 19a) and exact penalties for noncompliance are established (App. 19a-20a). If the new legislation is applied retroactively to the Petitioners' current

state litigation and appellate process, their conduct would apparently be measured by the new standards.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court grant a rehearing in this cause and issue its Writ of Certiorari to review the decisions of the lower courts. While the original Petition correctly laid out the existing law in effect at the time the challenged state court decisions were rendered, it is felt that the subsequent replacement of some of the relevant statutory provisions should be taken into account, and particularly because the state court proceedings are still in progress.

Respectfully submitted,

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APPENDIX

APPENDIX

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

February 22, 2005

Mr. Alvin T. Prestwood
350 Adams Avenue
Post Office Box 1910
Montgomery, AL 36102-1910

Re: Southeastern Rubber Recycling, a Division of Sunrise Garden Mart, Inc., et al.
v. Alabama Department of Public Health, et al.
No. 04-824

Dear Mr. Prestwood:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/ WILLIAM K. SUTER
William K. Suter, Clerk

Section 22-40-1

Short title.

This chapter shall be known and may he cited as the Alabama Scrap Tire Environmental Quality Act.

Section 22-40A-2

Legislative findings; purpose.

(a) The Legislature finds as follows:

(1) The Alabama Scrap Tire Study Commission (STSC) submitted a report as required by Section 22-40-10, Code of Alabama 1975, and SJR 152, adapted May 11, 2000. The section and the resolution both directed the STSC to study the present law and recommend revisions that are needed. The report from the STSC recommended substantial changes to the present law, which are incorporated into this chapter. The study and report were necessary to address the estimated 14 to 20 million tires stockpiled or illegally dumped.

(2) This state generates over five million scrap tires annually. Of these tires, an estimated two million are recycled annually and an estimated two million are disposed of legally in landfills. Many of the remaining tires are disposed of illegally and therefore may present a public health and/or environmental threat to the citizens of Alabama.

(b) This chapter has the following stated purposes, to:

(1) Remediate existing scrap tire stockpiles and prevent the formation of new ones.

(2) Provide a uniform, statewide system of regulation of scrap tires from the point of generation to the point of end use or disposal, to include a statewide scrap tire manifest system, and effective enforcement of scrap tire laws.

(3) Stimulate end use market development activities.

(4) Provide an adequate funding mechanism to clean up scrap tire piles, to provide for responsible enforcement of scrap tire laws, and to assist in promoting end use markets.

(5) Implement other recommendations contained in the report of the STSC.

Section 22-40A-3

Definitions.

The following terms shall have the following meanings unless the context clearly indicates otherwise:

(1) APPROVED. Authorized, certified, permitted by, or meets standards of a regulatory authority.

(2) CLEANUP. For purposes of this chapter, cleanup means the cleaning up, remediation, control, or removal of scrap tires from the environment.

(3) CONSUMER, a. For purposes of this chapter a consumer is defined as either:

1. A retail purchaser.

2. A dealer who buys a tire to be installed on a vehicle for resale.

b. A wholesale purchaser who buys tires for resale is not considered a consumer.

(4) DEPARTMENT. The Alabama Department of Environmental Management (ADEM) or its successor organization or organizations having similar responsibility.

(5) DISPOSAL. For purposes of this chapter, "disposal" shall be the deposit of a tire in a permitted landfill.

(6) ENFORCEMENT OFFICER. An employee of the department, or the person appointed by the county

commission to enforce this chapter, and any deputy enforcement officers enforcing this chapter under the supervision of the enforcement officer, and which county commission has a delegation agreement with the department.

(7) FUEL USER. A processor which uses tire derived fuel as a source of energy and has been permitted by the department or local air pollution control agency for the use of tire derived fuel.

(8) INNOCENT LANDOWNER. Any person, company, corporation, or governmental entity holding an interest in real property upon which scrap tires are discarded illegally by another party without specific permission from the holder of the real property interest, provided the holder took reasonable steps to prevent foreseeable acts of illegal disposal.

(9) PERMITTED LANDFILL. Any landfill that is permitted by the department,

(10) PERMITTED PROCESSOR. Any person engaged in the processing of tires as defined in this section that has received the proper permit from the department. A retreader is not considered a processor,

(11) PERMITTED TRANSPORTER. A person who has received the proper transporter permit from the department.

(12) PERSON. Any individual, organization, business, or entity, whether or not organized for profit.

(13) PROCESSED TIRE MATERIAL. Any material produced from tires or tire materials through any chemical, physical, or thermal process, including, but not limited to, baling.

(14) PROCESSING. For purposes of tire processing, the term includes any of the following activities related to pneumatic tires;

a. Evaluating, transferring. or sorting tires to determine their suitability for reuse as used tires or for retreading.

b. The compression and binding of whole tires or processed tire material, or baling.

c. Shredding, reducing, or altering tires by any physical, chemical, or thermal process, including, specifically, the burning of tires as a fuel,

d. Incorporating whole scrap tires into any end use product or structure where the scrap tire is not deconstructed into its component parts.

e. Punching or stamping products from whole scrap tires or producing processed tire material, crumb, or ground rubber product, whether or not that product is held for sale or used in the facility to produce an end product.

(15) RECYCLING or REUSE. A use of scrap tire or processed tire materials other than for land disposal, including, but not limited to, new products, rubber modified asphalt, civil engineering applications, or fuel use.

(16) REGISTERED RECEIVER. Either a class one receiver or class two receiver defined as:

a. Class one receivers are retail tire dealers, retreaders, and used tire dealers.

b. Class two receivers include all other receivers of scrap tires, other than class one receivers, that generate or accumulate a minimum of 10 scrap tires in a year, specifically including, among others, any component of government, vehicle fleet maintenance

or dismantling, rental or sales operations, or any other activity that generates scrap tires, whether or not organized for profit.

(17) REMEDEATION. This term is synonymous with "cleanup."

(18) REPLACEMENT TIRE. Any pneumatic tire sold to the consumer regardless of whether or not mounted on a rim or wheel.

(19) RESPONSIBLE PARTY or PERSON RESPONSIBLE. With respect to the remediation of any accumulation of scrap tires on any property, the person who deposited the tires on the property, if known and if different than the person who holds title to the property.

(20) RETAIL TIRE DEALER. For purposes of this chapter, a retail tire dealer shall include any person selling replacement tires to the consumer, whether or not mounted on a rim.

(21) RETREADED CASING REPLACEMENT TIRE. Any retreaded casing sold to the consumer, regardless of whether or not mounted on a rim or wheel.

(22) RETREADER. Any person engaged in the retreading of used tires.

(23) SCRAP TIRE. Any pneumatic tire no longer suitable or useable for its original purpose and, in addition, includes, but is not limited to, all tires with a manufacturing defect, except those that are in the process of being returned to the manufacturer for a refund.

(24) SCRAP TIRE COMMISSION (STC). The commission established in this chapter.

(25) SCRAP TIRE ENVIRONMENTAI. FEE. The fee established by this chapter, to be collected on the purchase of replacement tires.

(26) SCRAP 'TIRE FUND (STF). The separate fund established by this chapter.

(27) SCRAP TIRE STUDY COMMISSION (STSC). The commission created by Sections 22-40-1 to 22-40-11, inclusive.

(28) SOLID WASTE DISPOSAL ACT. Chapter 27 of this title.

(29) THREAT. A condition creating a substantial probability of harm, where the probability and potential extent of harm makes it reasonably necessary to take immediate action to prevent, reduce, or mitigate damage to persons, property, the environment, natural resources, or the public health and safety.

(30) TIRE DEALER. Any person engaged in the sale of tires to the consumer, whether or not mounted on a rim or wheel.

(31) TIRE DERIVED FUEL (TDF). Any tire or processed tire material intended for use as fuel.

(32) USED REPLACEMENT TIRE. Any pneumatic tire that is capable of reuse as a tire, directly or following repair, regrooving, or retread, excluding any processed tire material, end use product or by-product derived from scrap tires, that meets the following requirements:

a. If a tire is designed for highway use it must still have more than two thirty-seconds inch of tread.

b. The tire is stored in a rack or a stack, but not in a pile, in a manner consistent with National Fire Protection Association guidelines for tire storage, as well as vector control standards.

c. The tire is stored in a manner to allow inspection of each individual tire.

Section 22-40A-4

Accumulation and exposure limits.

(a) No person may accumulate more than 100 scrap tires, except as a permitted processor; registered receiver, or permitted landfill.

(b) No person may expose accumulated scrap tires to the elements for more than 30 days.

(c) A class one receiver as defined in Section 22-40A-3 may accumulate up to 1,500 scrap tires, or a higher number as set by regulation of the department for those engaged in used tire sales.

(d) A class two receiver as defined in Section 22-40A-3 may accumulate up to 300 tires. Provided, however, that class two receivers that are tire manufacturers are excluded from the 300-tire limit, provided the tires are not exposed to the elements.

Section 22-40A-5

Cleanup; reports; regulations; remediation management.

(a) Accumulations of scrap tires for whatever purpose, not in accordance with this chapter, shall be removed by the person responsible for the creation or the maintenance of the accumulation, or if the person responsible is not determined, by the landowner if the landowner does not qualify as an innocent landowner.

(b) All persons with more than 100 scrap tires on their property who are not registered receivers of scrap tires or a permitted processor shall report this fact to the department and provide the number of scrap tires and the location. This report shall be made no later than 12 months after September 1, 2003.

(c) The department shall establish by regulations a ranking system for remediation, and shall award all contracts for cleanup in accordance with this ranking system.

(d) The department shall provide regulations for cleanup, which shall apply to all cleanups.

(e) Department cleanup action shall be carried out in accordance with any applicable state contracting requirements.

(f) The overall management of the remediation of all scrap tires within the State of Alabama is the responsibility of the department.

(g) Each cleanup contractor shall satisfy all relevant laws, regulations, or other legal ordinances during the cleanup.

Section 22-40A-6

Receivers generally.

(a) For purposes of this chapter, there shall be two classes of receivers, class one receivers and class two receivers as defined in Section 22-40A-3.

(b) Receivers of both classes are required to use a permitted transporter to haul tires for disposal, for further end processing, or for further evaluation by another business, except as provided in subsection (c).

(c) Class one receivers are not required to use a permitted transporter for purposes of transporting their tires or their customers' tires between their business locations or between a customer site and the receiver.

(d) Class one receivers are not required io obtain a permit as a transporter, as otherwise required under Section 22-40A-7, for transporting scrap tires for disposal or further processing.

(e) All receivers shall register without fee with the department and obtain a receiver number and vehicle decals, at no cost, equal to the number of vehicles in the receiver's fleet

used to transport scrap tires. Decals shall be carried visibly in or on the vehicle, in accordance with department regulations.

Section 22-40A-7

Transportation of scrap tires; permits.

(a) No person, except a properly registered class one receiver, may engage in the transportation of scrap tires, whether or not for profit, without holding a valid transporter permit issued by the department, unless otherwise exempted by this chapter or unless allowed by department regulation, if he or she transports more than eight scrap tires at any one time. An application for a permit shall be made in the form required by the department and provide such information as the department may, by regulation, require.

(b) The department, by regulation, may set higher tire transportation limits than provided in subsection (a) for special situations, such as an authorized amnesty program.

(c) Permitted transporters shall receive decals equal in number to the number of vehicles in the transporter's fleet, at no cost. Decals shall be visibly displayed in or on the vehicle, in accordance with department regulations.

(d) Persons making applications as transporters shall pay an application fee as determined by the department. Applicants shall provide information that the department requires by regulation.

(e) Transporter permits shall he valid for three years, unless revoked for violating this chapter or the department's regulations.

(f) Transporters shall deliver scrap tires that have been properly manifested as required by Section 22-40A-9 and departmental regulations, only to either of the following:

(1) A receiver, processor, or other transporter, permitted or registered under this chapter.

(2) A permitted landfill.

(g) Transporter decals shall be displayed in conformance with regulations issued by the department on any vehicle engaged in the collection and transportation of scrap tires and may be transferred only to vehicles owned and operated by that business.

(h) All class one receivers who are transporting used or scrap tires for their own purposes shall maintain inside the vehicle during transport appropriate documentation that each such transport is for his or her own use and for the indicated purpose.

(i) Both intrastate and interstate transport of used and scrap tires are subject to regulation by the department.

Section 22-40A-8

Processing of scrap tires; permits.

(a) No person may engage in the processing of scrap tires, as defined herein, whether or not organized for profit, unless the person holds a valid processor permit issued by the department.

(b) The department, by regulation, shall set operational requirements for processors, including limitations on the maximum number of tires that may be on site, whether processed or unprocessed. The department shall also establish by regulation requirements for mobile processors.

(c) Each applicant for a processor's permit shall pay an application fee as determined by the department by regulation, and shall provide information that the department requires by regulation. Application shall be made in the form required by the department.

(d) Permits issued by the department to scrap tire processors shall be valid for a five-year period, unless revoked for cause.

(e) Class one receivers are not required to hold processor permits in order to engage in the evaluation of tires collected during the course of their business as suitable for reuse as tires or as casings for retreading.

(f) A fuel user may operate without obtaining a processor permit and must register as a fuel user with the department on forms prepared by the department The fuel user must store tires or TDF in compliance with storage regulations established by the department.

(g) Any facility that produces an end use material or product from ground or crumb rubber derived from scrap tires that has been purchased from another facility, or any facility using the component parts of scrap tires or processed tire material as a substitute raw material, is exempt from the requirement of being permitted as a processor pursuant to this section. Any facility seeking an exemption must register with the department on forms prepared by the department.

Section 22-40A-9

Manifests; out-of-state tires transported into Alabama.

(a) The department shall develop and promulgate a manifest through rulemaking.

(b) All scrap tire receivers, transporters, processors, and landfills are required to use a written manifest as prescribed in this section and as provided by regulations of the department. The manifest shall be originated by the receiver and shall identify the quantity of tires transported, stored, or processed, and other information as the department may require. The manifest shall be distributed by the department and be required to accompany the transportation, storage, and processing of scrap tires until the tires are processed or disposed.

(c) A copy of each complete manifest shall be forwarded monthly to the receiver by the processor(s) or landfill(s) to which scrap tires are delivered. Records shall be retained by

the receiver for a minimum of three years, or as otherwise required by the department.

(d) The department may establish regulations for transport of out-of-state tires into Alabama.

Section 22-40A-10

Financial assurance.

(a) The department shall, by regulation, establish the financial assurance levels and methods that are to be set to provide funds to abate any problems created as a result of a failure by the transporter or processor to properly manage scrap tires.

(b) Receivers of either class are not required to post financial assurance.

(c) Permitted transporters and processors shall post financial assurance. A fuel user that registers with the department shall post financial assurance if the user stores whole tires or shredded tires in excess of amounts the department establishes by regulation.

Section 22-40A-11

Administration and enforcement.

(a) The department is designated by this chapter as the administrating agency for this chapter including administering remediation and enforcement programs; provided, however, the department may enter into delegation agreements with county commissions for enforcement of this chapter. The department is hereby authorized to carry out the purposes of this chapter and is empowered to administer and enforce this chapter using the authorities granted to it by the Environmental Management Act.

(b) The department shall develop and manage a remediation contract program for cleanup, management, or disposal of scrap tires.

(c) The department may by regulation exempt certain tires under this chapter.

(d) The department shall administer the program in a way to ensure enforcement of the chapter in all counties.

(e) Department funds and resources as provided by the Scrap Tire Fund (STF) may be used for support of on-going training for delegated county programs.

(f) The department, after holding a hearing in accordance with the procedures set forth by regulation, may revoke, suspend, or deny a receiver registration or deny a processor or transporter a permit based on the requirements or this chapter.

(g) Those funds collected by the department for violations pursuant to this chapter shall he directed to the Scrap Tire Fund, except for a portion of those funds directed to the department to cover expenses to obtain .a penalty.

(h) The department, by regulation, may develop other incentive programs to reduce illegal scrap tire disposal.

Section 22-40A-12

Delegation agreements; county responsibilities.

County commissions may request primacy on enforcement and establish delegation agreements with the department for enforcement of this chapter. The department shall establish by regulation the procedures for delegation. Counties that wish to voluntarily establish such delegation agreements with the department for local enforcement shall have the fallowing responsibilities:

(1) Provide quarterly reports to the department on all scrap tire activities within that quarter on a form prepared and provided by the department.

(2) Provide written investigation reports to the department within 10 days of the initial investigation.

(3) Investigate all reports and complaints regarding scrap tires within the respective county.

(4) Investigate illegal dumping of scrap tires.

(5) Review manifests of scrap tires at businesses.

Section 22-40A-13

End use market development grants program.

The Alabama Department of Economic and Community Affairs (ADECA) is designated as the department of state government responsible for development and management of an end use market development grants program. The cost of administration of these grants shall not exceed five percent of the funds allocated for the ADECA grant program. ADECA may choose to negotiate agreements with any person to participate in the end use marketing development grants program.

Section 22-40A-14

Scrap tire environmental fee. THIS SECTION WAS ASSIGNED BY THE CODE COMMISSIONER. THIS SECTION HAS NOT BEEN CODIFIED BY THE LEGISLATURE.

(a) A scrap tire environmental fee shall be collected at the point of sale from the consumer on replacement tires, whether or not the tires are mounted on a rim or wheel, in the amount of one dollar ($1) per tire, and shall be remitted to the Department of Revenue on a monthly basis. Out-of-state tires, such as fleet tires, not purchased in the State of Alabama must be returned to the point of origin for disposal or the scrap tire environmental fee shall be imposed for each tire brought into the state and must be remitted to the Department of Revenue. In addition, the scrap tire environmental fee shall be collected on a retreaded casing replacement tire when sold to a consumer.

(b) The fees imposed by subsection (a) shall be paid monthly to the Department of Revenue by the 20th day of the following month, accompanied by forms as prescribed by the Department of Revenue. The forms shall contain a printed declaration that the information is being reported under penalty of perjury and shall be subscribed by the person who completes the forms, showing the number of tires subject to the environmental fee and such other information as the Department of Revenue may require.

(c) The tire dealer may retain five percent of the fees collected per each report timely filed, to cover costs associated with the collection and payment of the fee to the Department of Revenue. No recovery of administrative costs shall be allowed, nor any monies retained by a tire dealer, from any scrap tire environmental fees that are not paid before becoming delinquent.

(d) The fee imposed in subsection (a) shall be collected and administered by the Department of Revenue in accordance with Chapter 2A of Title 40. The Department of Revenue shall also impose interest on any scrap tire environmental fee paid after the due date in accordance with Section 40-1-44.

(e) The Department of Revenue may promulgate and enforce rules and regulations to effectuate the scrap tire environmental fee provisions of this chapter. All rules and regulations promulgated shall have the same force and effect of law.

(f) In addition to any and all other funds heretofore or hereafter appropriated, there is hereby appropriated from the State General Fund to the Department of Revenue, to offset its costs to implement and administer this chapter, as a first charge against the fees collected pursuant to this chapter, for the fiscal year ending September 30, 2003, the sum of sixty thousand dollars ($60,000). Every year thereafter as a first

charge against the revenues collected, an amount of revenue shall be appropriated to the Department of Revenue to offset its costs of collection.

Section 22-40A-15

Distribution of fee proceeds.

The net proceeds of the scrap tire environmental fee levied by Section 22-40A-14 shall be distributed as follows:

(1) To pay the costs of remediation, abatement, removal, or other remedial action within the range of 45 percent to 75 percent of monies deposited to the Scrap Tire Fund during the previous budget year, including equipment, labor, supplies, and materials related to tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the department.

(2) To pay the costs of the department associated with the development and enforcement of regulations, not to exceed 20 percent of monies deposited to the Scrap Tire Fund during the previous budget year, including personnel, training, materials, and equipment relating to administration of this chapter and for the training of enforcement personnel within the department, county, and other governmental organizations. Funds not expended by the department during a budget year shall be returned to the Scrap Tire Fund not later than January 1 following the end of the budget year.

(3) To administer a program, within the range of zero percent to 20 percent of monies deposited to the Scrap Tire Fund during the previous budget year, managed by ADECA, directed at promoting and developing markets as an alternative to the landfill disposal of scrap tires or processed tire material as an end use. ADECA or its successor organization shall be so authorized by this chapter for these purposes.

(4) To fund the programs delegated by the department to counties for enforcement of regulations, not to exceed 10

percent of monies deposited to the Scrap Tire Fund during the previous budget year, including personnel, training, materials, and equipment relating to administration of this chapter.

(5) To pay the tire retailer, not to exceed five percent of fees collected, for collection and accounting costs associated with collection of the fee and the monthly distribution to the Department of Revenue, as specified in subsection (c) of Section 22-40A-14.

(6) To pay the costs of administration of the Department of Revenue, not to exceed two percent of monies, to include the first charge against revenues pursuant to subsection (f) of Section 22-40A-14, deposited to the Scrap Tire Fund during the previous budget year, associated with establishment of the Scrap Tire Fund and for the receipt of funds from all income sources pursuant to this chapter, disbursements, and auditing revenues in the Scrap Tire Fund.

Section 22-40A-16

Disposition of funds.

(a) All fees, interest, or other income distributed to the Scrap Tire Fund shall be used only for the purposes specified in this chapter.

(b) All monies derived from fines and violations of this chapter that are collected by county enforcement programs pursuant to this chapter shall be distributed to the county for use only in the enforcement program.

Section 22-40A-17

Evaluation of suspected property; notice; costs.

(a) The department or its designated representatives may access property suspected of containing scrap tires for the purpose of evaluation of the threat to public health, the environment, and safety.

(b) The department, by regulation, shall establish an administrative process to provide the responsible party, other than the innocent landowner, notice of obligation to remediate scrap tires found that are in violation of this chapter. If the responsible party fails or refuses to remediate the scrap tires, the department or its contractor or subcontractors shall be granted access to the property for the sole purpose of remediation of the scrap tires.

(c) The department may recover the full cost associated with the remediation, including legal expenses, from the responsible party, other than an innocent landowner.

(d) As long as an innocent landowner is working cooperatively with the department or its representative to clean up the site, the innocent landowner shall not be liable for costs of cleanup. Subsequent to cleanup, the innocent landowners shall cooperate with the department to prevent further tire dumping on the relevant site.

Section 22-40A-18

Violations.

Any of the following actions shall constitute a violation:

(1) Transporting scrap tires in violation of this chapter.

(2) Delivering scrap tires to a facility not approved to accept tires pursuant to this chapter.

(3) Illegal storage or disposal of processed tire material.

Section 22-40A-19

Penalties.

(a) Disposing of scrap tires in violation of this chapter shall constitute a Class C felony.

(b) Any person convicted of disposing or processing of scrap tires in violation or this chapter shall also be personally and

financially responsible for the proper removal of the scrap tires according to this chapter and any rules or regulations promulgated by the department.

(c) Any person who knowingly or recklessly makes any false statement or representation in any document used to comply with this chapter is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues, in accordance with subdivisions (17) to (20), inclusive, of Section 22-22A-5.

(d) The enforcement officers may issue citations for any violation of this chapter, and upon conviction, the violator or violators shall be fined a minimum of three hundred dollars ($300) for each separate violation.

(e) In addition to the financial responsibility required by subsection (b), a fine of five dollars ($5) per tire shall be assessed against any party who transfers, transports, or stores scrap tires in violation of this chapter, which fee shall be in addition to all other fines or penalties assessed under this chapter.

(f) In the enforcement of this chapter, department employees and county enforcement officers shall have all authority granted to the license inspector pursuant to Section 40-12-10, and in addition, may investigate any and all reported violations of this chapter within the county, and may independently monitor all scrap tire receivers, transporters, and processors within the county for compliance with this chapter. The enforcement officer may issue citations using the Uniform Non-Traffic Citation and Complaint as provided under Rule 20 of the Alabama Rules of Judicial Administration. The enforcement officer in each county shall share information regarding possible violations in another county with the enforcement officer for that county.

Section 22-40A-20

Applicability to government organizations.

All governmental organizations, whether federal, state, or other local governing bodies, shall be exempt from the payment of fees associated with all provisions of this chapter. These organizations shall comply with all statutory and regulatory provisions of this chapter regarding the storage, transport, processing, cleanup, and disposal of scrap tires.

Section 22-40A-21

Scrap Tire Commission.

(a) There is created the Scrap Tire Commission (STC) to review the implementation of this chapter, including the scrap tire program, and recommend changes to this chapter to the Legislature, as needed. The STC shall establish procedures for its operations. On September 1, 2003, the present monies received under the existing Alabama Scrap Tire Study Commission (STSC) are transferred to the Scrap Tire Fund created herein.

(b) The Scrap Tire Commission shall be comprised of the following individuals or their designees or a representative of each of the authorities listed below:

(1) The State Health Officer.

(2) The Director of the Alabama Department of Environmental Management.

(3) The Director of the Alabama Department of Economic and Community Affairs (ADECA).

(4) The Association of County Commissions of Alabama.

(5) The Alabama Tire Dealers Association shall be represented by two members, one of which shall be the president of the association.

(6) The Rubber Manufacturers Association.

(7) A representative of the scrap tire industry, appointed by the Governor.

(8) A representative of the scrap tire processing industry, appointed by the Lieutenant Governor.

(9) A representative of the environmental community, appointed by the Speaker of the House of Representatives.

(10) A representative of the scrap tire class two receivers, appointed by-the Business Council of Alabama.

(c) The STC shall review the implementation of the law and effectiveness of the revenue derived from the law to accomplish the intended purposes and advise the Legislature and the department as appropriate.

(d) The STC shall meet quarterly for the first two years at a minimum, and thereafter as determined by the STC, but no less than annually. The department and ADECA shall report scrap tire program status to the STC at each regularly called meeting of the STC. Expenses of the STC shall be paid from the Scrap Tire Fund.

(e) Members of the STC shall be reimbursed for expenses when attending meetings representing the STC from the Scrap Tire Fund. Reimbursement shall be approved and certified by the director upon receipt of appropriate documentation in accordance with Sections 36-7-1 through 36-7-42.

(f) After seven years or upon the recommendation of the STC and the department, the Legislature shall consider reducing that portion of the scrap tire environmental fee directed towards cleanup. Provided, that any reduction in the scrap tire environmental fee shall become effective October 1 following the year in which the STC and the department concur that a reduction is in order. However, the fee shall not be reduced below fifty cents ($.50) in order to assure adequate enforce-

ment of the law by the department and cooperating counties and to fund unanticipated cleanups, as needed.

(g) The STC shall establish the percentages for distribution of funds that accumulate in the Scrap Tire Fund, except as otherwise specified by this chapter.

(h) Prior to the promulgation of any proposed regulation dealing with this chapter, the department shall receive the approval of the STC. The STC shall provide the department a response to its request for approval within 60 days of receipt of such request unless such other time is mutually agreed upon by the department and the STC.

(i) STSC members representing those entities specified in subsection (b) shall continue as members of the new STC unless or until replacements are appointed.

(j) After September 1, 2003, existing members of the STSC, or their replacements who become members of the STC, must meet within 90 days. The department shall notify the STC of the time and place of the initial meeting.

(k) The department and ADECA, through the STC, shall report biennially to the Legislature on the activities of the scrap tire programs authorized by this chapter, including recommendations. Such reports shall be submitted by the STC.

Section 22-40A-22

Scrap Tire Fund.

(a) A Scrap Tire Fund (STF), separate from the State General Fund, is created for carrying out this chapter.

(b) All monies within the STF shall be continuously appropriated. All monies remaining in the Department of Public Health, designated for the present STSC, after payment of all outstanding expenses, shall be transferred to the department for program implementation by September 1, 2003, and all monies collected by the Alabama Department of Public

Health pursuant to the previous scrap tire program, including, but not limited to, license fees, which accrue after September 2003, shall be transferred to the department on October 1, 2004.

(c) The STF is authorized to receive funds from other sources outside the scrap tire environmental fee, including interest generated from the STF, grants, allotments, and contributions, whether public or private.

Section 22-40A-23

Implementation of chapter.

The department shall implement this chapter to the extent funds are provided by the STF.

Section 22-40A-24

Chapter ineffective upon abolition of scrap tire environmental fee.

In the event the scrap tire environmental fee on replacement tires imposed by Section 22-40A-14 is abolished, as determined by the Department of Revenue, this chapter shall be null and void and of no other force or effect of law.